

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of Part 90 Concerning the)
Commission's Finder's Preference Rules)

WT Docket No. 96-199

To: The Commission

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Comments
of the
Industrial Telecommunications Association, Inc.

The Industrial Telecommunications Association, Inc. ("ITA"), pursuant to the Federal Communications Commission's Notice of Proposed Rule Making in the above-referenced matter, hereby respectfully submits these Comments responsive to the Commission's proposal.¹

I. PRELIMINARY STATEMENT

1. ITA, formerly the Special Industrial Radio Service Association, Inc. ("SIRSA"), is an association organized under the laws of the District of Columbia. ITA is the Commission's certified frequency coordinator for the Special Industrial Radio Service and the Industrial/Land Transportation 421-430 MHz and 800/900 MHz frequency pools. ITA also coordinates modification

¹ Notice of Proposed Rule Making (FCC 96-383), WT Docket No. 96-199, adopted September 17, 1996, released September 27, 1996, (hereinafter "Notice").

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applications for existing systems licensed in the 800 MHz General Category pool. ITA coordinates in excess of 6,000 applications per year on behalf of applicants seeking Commission authority to operate radio stations on frequency assignments allocated to the Special Industrial Radio Service and the enumerated 800/900 MHz frequency pools.

2. ITA enjoys the support of a membership that includes more than 6,500 private land mobile radio communications licensees and the following trade associations:

Alliance of Motion Picture and Television Producers
Associated Builders & Contractors, Inc.
Florida Citrus Processors Association
Florida Fruit & Vegetable Association
National Mining Association
National Propane Gas Association
National Utility Contractors Association
United States Telephone Association.

II. COMMENTS

A. Background

3. The FCC initiated the finder's preference program in December 1991. The purpose of the program was to reward those persons who helped the FCC identify unused private land mobile channels. Under this program, the FCC encourages interested persons to provide information on cases where a licensee has failed to construct, or satisfactorily operate, assigned channels. If the FCC successfully recovers the channels as a

result of the information the "finder" provides, the Commission gives the finder a priority claim to the recovered channels.

4. In the instant proceeding, the Commission proposes to eliminate the finder's preference program for the 220-222 MHz band. The Commission also seeks comment on the continuing viability of the finder's preference program in the 470-512 MHz and the 800 and 900 MHz private wireless (non-SMR) frequency pools. As one of the original proponents of the finder's preference program, ITA is pleased to submit the following comments.

B. Finder's Preference Program at 220-222 MHz

5. The Commission believes that the finder's preference program is incongruous with the geographic licensing approach the FCC expects to implement in the 220-222 MHz band. ITA agrees. In ITA's view, the filing of additional finder's preference requests would likely be counterproductive in an environment where the FCC expects to give wide-area licensees broad authority to implement stations over a geographic area.

C. Utility of Finder's Preference Program for Other Bands

6. The Commission has questioned the usefulness of the finder's preference program for 470-512 MHz and the non-SMR channels at 800/900 MHz. In raising this question, the FCC

reasons that there have been comparatively few finder's preference requests for non-SMR channels and that the Commission's existing oversight programs could adequately address enforcement of the station implementation rules. ITA respectfully disagrees.

7. For the reasons discussed below, ITA continues to support the use of finder's preferences for private wireless frequency bands. Elimination of the finder's preference program for 800/900 MHz SMR channels or the 220-222 MHz band does not resolve any of the problems that the finder's preference program was intended to address. For those frequency bands and channels that will be auctioned off to the highest bidder, the auction winners will gain exclusive "finder's preference rights" for their assigned spectrum. However, auction winners will still have to deal with those incumbent licensees who have failed to properly implement their stations, or are in various stages of implementing their stations. The auction winners may, in turn, request assistance from the Commission in dealing with such licensees and, similarly, incumbent licensees may require Commission assistance in fending off overly aggressive auction winners.

8. From ITA's perspective, two points are particularly relevant to the finder's preference discussion: *first*, even for channels that are subject to geographic licensing, auctions

and wide-area licensing do not resolve compliance and verification matters, especially in frequency bands as heavily congested as the 800 MHz band; and, *second*, in the interest of promoting efficient use of the radio spectrum, there is an enhanced need to preserve the finder's preference program, or a comparable enforcement effort, for those channels that are not subject to auctions and wide-area licensing.

D. Dismissal of Pending Finder's Preference Requests

9. The Commission proposes to retain the discretion to dismiss finder's preference requests that are pending for all frequency bands in which the finder's preference program is ultimately eliminated. ITA disagrees with this approach. The Commission has granted 369 finder's preference requests since the inception of the program. The finder's preference program has, therefore, successfully returned to productive use an abundance of channels that otherwise may have lain fallow.

10. The pending finder's preference requests offer the prospect of restoring even more channels to productive and efficient use. According to the Commission's statistics, there are 527 or so finder's preference requests that remain in pending status. Based on prior experience, the Commission can expect to grant approximately 41 percent of these pending requests. Thus, of the pending 527 requests, more than 200 will result in the recovery and reassignment of valuable

spectrum. If the Commission were to dismiss all of the pending requests, it would forego the opportunity to recover a significant amount of channels. For this reason, ITA does not believe the proposal to dismiss the pending requests is either prudent or in the public interest. Notwithstanding the radical changes that have taken place over the past few years in the FCC's licensing and assignment process, the Communications Act continues to impose an obligation upon the Commission to promote efficient use of the radio spectrum. The finder's preference program is one prominent and useful mechanism for fulfilling this obligation.

11. In ITA's view, the FCC should indeed process all pending requests. ITA recognizes that the processing of pending requests will require additional time and additional effort by the FCC's staff. However, by processing the pending finder's preference requests, the Commission would be taking positive action to clean up the spectrum. If the Commission elects not to process the pending requests, it would unfairly benefit auction winners at the expense of entities that have devoted considerable effort to performing the due diligence required to document a finder's preference claim.

12. ITA recognizes that the proposal to dismiss pending finder's preference requests, at least insofar as 220-222 MHz is concerned, is motivated by a desire to clean the slate in

anticipation of auctions. By not processing pending requests, however, the FCC would be skewing the process against those who, in good faith, relied upon the existing rules to assist the Commission's channel recovery efforts.

13. Dismissal of the pending requests would be particularly insensitive to small businesses who, despite FCC assurances to the contrary, often find it financially impractical to participate in the auctions. The Commission contends that dismissal of the pending requests would not substantially harm persons with finder's preference requests on file. This is so, the Commission argues, because "there would be an opportunity to apply for the unused frequencies once they become available for licensing."² ITA finds the logic underlying this argument to be both faulty and cavalier.

14. Though all individuals may have the opportunity to apply for unused frequencies, it is unrealistic to expect that all entities have an equal opportunity to prevail in the spectrum auctions. As the Commission must concede, the ultimate winners of the auctions, more often than not, are entities having the most financial resources. With the existing rules, everyone has equal opportunity to file a finder's preference request. Under auctions, not everyone has an equal opportunity to gain access to the spectrum they may

² Proposal, paragraph 11.

need.

**E. Applicability of Finder's Preference Program to
800/900 MHz Private Pools**

15. The finder's preference program still holds relevance and promise for the private, non-SMR pools at 800/900 MHz. Therefore, ITA strongly urges the Commission to retain the finder's preference program for these 800/900 MHz private pools. As a result of the intercategory sharing provisions previously in place for 800 MHz systems, there are many private pool channels licensed to SMR systems. Many of the SMR licensees who have accessed the private, non-SMR channels at 800 MHz will certainly attempt to use these non-SMR channels as post-auction "reservoirs" for relocating stand-alone systems out of the spectrum designated for wide-area licensing.

16. In the post-auction environment at 800 MHz, the finder's preference program will have an enhanced usefulness for PMRS licensees. If the FCC is sincere in preserving, for private use, the spectrum at 800 MHz that is now designated for private pools, it must preserve the finder's preference program, or some form of it.

17. It would appear that at least one FCC motivation for eliminating the finder's preference program at 470-512 MHz and in the 800/900 MHz private pools is to conserve staff

resources. It does not follow, however, that the finder's preference program must be eliminated merely because the Commission no longer has the desire or the resources to oversee this program. This is a function that could easily be delegated to the Commission-certified frequency coordinators.

18. Accordingly, ITA strongly urges the FCC to preserve the finder's preference program for 470-512 MHz and the 800/900 MHz private pools. Further, if the FCC does not desire to perform the finder's preference function, it should transfer responsibility for the program to those frequency coordinators who have the wherewithal to perform the due diligence necessary to process finder's preference requests. In any event, under no circumstances, should the Commission eliminate the finder's preference program for 470-512 MHz and the 800/900 MHz private pools.

III. CONCLUSION

19. ITA believes that the finder's preference program is incompatible with the wide-area licensing scheme proposed for the 220-222 MHz band. ITA therefore agrees with the FCC's proposal to eliminate the finder's preference program for this band. ITA disagrees, however, with the proposal to dismiss pending finder's preference requests.

20. Moreover, ITA strongly believes that the finder's

preference program continues to serve a valid public interest in frequency bands other than 220-222 MHz. Specifically, ITA urges the Commission to retain the finder's preference program for 470-512 MHz and the 800/900 MHz private pools.

Additionally, if the FCC no longer wants to oversee the finder's preference function, it should transfer responsibility for the program to those frequency coordinators who have the resources and interest in administering the program in a manner that will continue to ensure efficient use of the valuable spectrum resources allocated to the private wireless services.

WHEREFORE, THE PREMISES CONSIDERED, the Industrial Telecommunications Association, Inc. respectfully submits these Comments and urges the Federal Communications Commission to act in accordance with the views expressed herein.

**INDUSTRIAL TELECOMMUNICATIONS
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